United States General Accounting Office

GAO

Report to the Honorable
Alan J. Dixon, U.S. Senate

32

March 1988

INS DELIVERY BONDS

Stronger Internal Controls Needed

GAO/GGD-88-36

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-229360

March 7, 1988

The Honorable Alan J. Dixon
United States Senate

Dear Senator Dixon:

This report is in response to your request that we examine selected enforcement activities of the Immigration and Naturalization Service relating to its management of delivery bonds.

As arranged with your office, unless you publicly announce the contents of the report earlier, we plan no further distribution until 7 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Richard L. Fogel

Richard L. Fogel
Assistant Comptroller General

Executive Summary

Purpose

Delivery bonds are used to assure aliens' appearances at deportation hearings. Such bonds are contracts between the Immigration and Naturalization Service (INS) and the aliens, or persons acting on their behalf (obligors) promising their appearances. An INS study indicated that INS experienced a 55 percent breach rate on bonds in 1984 and 1985. In addition, INS has been experiencing problems in billing on bonds when they have been breached.

Senator Dixon asked that GAO identify (1) any weaknesses in INS' bonding system that can contribute to these problems and (2) issues that INS should consider if it changes its bonding system. (See p. 12.)

Background

INS can deport aliens who enter the country illegally, violate a condition of entry, or are convicted of certain crimes, such as murder, rape, or manslaughter.

To help guarantee aliens' appearances at deportation-related meetings or hearings, INS can require bonds that are supported by money or collateral. Should the aliens not appear, the money or collateral may be forfeited. INS officials set specific bond amounts based on their individual judgment as to the likelihood that the aliens will appear. According to INS, the average bond amount is $2,500.

In early 1987, INS estimated that about 70,000 unbreached bonds were outstanding which totaled $175 million—cash bonds of $105 million and surety bonds of $70 million. Under a cash bond an alien or obligor on behalf of the alien must deposit the entire bond amount in cash with INS. Under a surety bond the alien or someone on the alien's behalf must furnish collateral (equivalent in value to the bond amount) to a surety (insurance) company. INS does not require the surety company to provide to it the collateral used by the alien. However, if the alien fails to appear, the surety company is liable to INS for the bond amount if INS notifies the company. (See pp. 8 to 12.)

INS recognized internal control problems with its bond delivery program before GAO began its work and was considering changes. As a result, GAO limited its review to two INS district offices and relied extensively on INS reports.

Results in Brief

INS procedures for setting bond amounts have resulted in immigration judges reducing bond amounts on appeal by aliens. According to INS, lowered bond amounts reduce the aliens' appearance rates.

INS has not been providing timely notices to obligors of aliens' scheduled hearings. As a result, the obligors are not financially liable should the aliens not appear when they are supposed to and INS cannot collect the bond value.

According to an INS official, INS does not bill promptly when surety bonds are breached and therefore delays in collection of money owed the government occur. Obligors can appeal INS' determinations that the bonds have been breached. According to an INS report, INS has improperly billed obligors for the bond amounts before appeals have been resolved.

INS has recognized problems associated with its bond system and is considering changing to a cash-only system.

Principal Findings

Guidance Needed for Setting Bond Amounts

INS officials set initial bond amounts based on their individual experiences with other aliens. Factors considered include an alien's family ties in the United States and employment history. INS considers these factors as criteria for setting bond amounts.

According to the Chief Immigration Judge, lack of agency-wide guidance results in different INS officials setting different bond amounts for aliens with similar backgrounds. He also said that if INS established guidance for INS officials to set bond amounts, immigration judges would be less likely to reduce them. An INS draft study of over 2,200 bonds from 19 INS locations said that aliens breached bonds in 72 percent of the cases in which immigration judges reduced bond amounts and in 44 percent when bonds were not reduced. In commenting on GAO's draft report, the Department of Justice said that INS is refining its criteria. (See p. 15.)

Failure to Notify Obligors About Hearings

If INS does not notify the obligor in advance, the obligor is not liable to pay the bond should the alien not appear. According to INS internal audit officials, notices are not being sent to obligors for them to notify aliens of their scheduled hearings. (See p. 16.)

Changes to INS Billing Procedures Are Needed

INS regulations require that it bill obligors after the bond has been breached. INS reported in 1986 that it took an average of 130 days. Further, a 1986 INS report on debt collection stated that the delays in billings for breached bonds resulted in a backlog of unbilled breached bonds. The report said that debt collection was a low priority in INS. Another INS report in May 1987 on the Houston Office said that obligors had not been billed for 425 breached bonds, totaling about $1.4 million. The estimated interest cost to the government from April 1986 through February 1987 was about $41,000. (See p. 17.)

When obligors appeal the breach notification, INS should not bill the obligor until the appeal is resolved. However, according to an INS report, INS district offices sometimes did not notify INS regional personnel responsible for billing the obligor of the appeal and as a result billing was not suspended. (See p. 18.)

Proposed Cash-Only Bond System

INS recognizes that its management controls for bonds need improvement and proposed in July 1987, in a formal rulemaking, to permit cash-only bonds. While such a change could lead to improvements, INS still has to finalize the criteria for setting bond amounts and properly notifying obligors of breached bonds. Also, should INS change to a cash-only bond system it may need to modify its internal controls to handle the increases in cash. (See p. 20.)

Recommendations

GAO is making recommendations to improve INS management of its bonding systems. Certain improvements will be needed, depending on whether INS retains its current delivery bond system or changes to a cash-only system. (See p. 24.)

Agency Comments

The Department of Justice said that INS has been aware of the problems discussed in GAO's draft report and cited a number of actions as being in progress to improve its management of the delivery bond program. If properly implemented, GAO believes these actions should effectively

address GAO's recommendations on establishing guidance and notifying and billing obligors. (See p. 25.)

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Abbreviations

AFACS	Alien File and Accounting Control System
BIA	Board of Immigration Appeals
D&D	Detention and Deportation
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
GAO	General Accounting Office
INS	Immigration and Naturalization Service
OMB	Office of Management and Budget
OPI	Office of Program Inspection

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Introduction

Aliens may be in the United States legally or illegally. Legal aliens generally include (1) immigrants who have entered the country on valid visas or passports and have been granted resident status by the Department of Justice's (DOJ) Immigration and Naturalization Service (INS) and (2) nonimmigrants such as students, tourists, temporary workers, and business visitors who do not violate the conditions set forth in their visas. Illegal or undocumented aliens include those who enter the country without visas or passports and without making themselves known to INS and nonimmigrants who violate a condition of their visas, such as remaining in the country beyond the period of time authorized.

The Immigration and Nationality Act, 8 U.S.C. 1101, authorizes INS to apprehend and deport an alien who enters the country illegally, violates a condition of entry, or is convicted of certain crimes, such as murder, manslaughter or rape. Once deported, aliens generally may not legally reenter the country for 5 years.

INS apprehends aliens who it believes may be deportable. After their apprehension, INS decides whether to (1) further detain aliens, (2) release them on their own recognizance, or (3) release them on bond pending resolution of their cases. INS schedules these aliens for subsequent meetings for such purposes as determining their legal status. Aliens additionally are scheduled for hearings before immigration judges who review issues such as those involving aliens' release and possible deportation.

According to the INS Deportation Officer Handbook, the primary purpose of delivery bonds—contracts between INS and the aliens or persons on their behalf promising the aliens' appearances and supported by money or collateral—is to ensure certain aliens' appearances at meetings or hearings. Should the aliens not appear, the money or collateral can be forfeited. INS officials set the specific bond amounts[1] to further influence the aliens' appearances. According to INS estimates, the average bond amount is about $2,500.

Aliens who INS believes will appear for subsequent meetings with INS or for deportation hearings are not required to post bonds. In contrast, aliens who INS believes would not appear for meetings or hearings if released on their own recognizance or on bond are detained.

[1]Although the lowest bond amount which can be set is $500, bond amounts can be higher. For example, according to an official who sets bonds in INS' New York District Office, bond amounts are typically in the $7,500 to $12,500 range.

Justice Organizations and Resources

INS carries out its responsibilities through a central office, 4 regional offices, and 33 district offices. Congress appropriated about $575 million to support all of INS' operations in fiscal year 1986.

INS responsibilities include initiating and implementing deportation procedures against those aliens believed to be residing illegally in the United States. INS enforcement personnel have the primary role for identifying aliens for deportation. The Detention and Deportation (D&D) personnel located in district offices are responsible for detaining aliens and processing them for deportation and for making bond-related decisions. The INS Accounting Branch, under the Comptroller, is primarily responsible for billing of funds owed on breached bonds. The INS general counsel's office is responsible for initiating actions to collect funds due when prior billings have been unsuccessful. Approximately $80 million was allocated for detention and deportation purposes for fiscal year 1986, including funds for approximately 1,200 staff members in the districts, regions, and central office.

Within DOJ, but separate from INS, the Executive Office for Immigration Review (EOIR) is responsible for ensuring that immigration laws receive uniform and consistent application throughout the United States. The EOIR Office of the Chief Immigration Judge provides overall program direction and establishes policies and priorities for immigration judges located throughout the United States.

Immigration judges hold hearings for determining the status of an alien's deportability and for reviewing an alien's release under conditions set by INS, including bond amounts. These judges may decide that the alien is or is not deportable. The EOIR Board of Immigration Appeals (BIA) hears appeals by aliens of immigration judges' decisions. Aliens can further appeal BIA decisions to the federal courts.

Bonding Process

The bonds discussed in this report are called delivery bonds. There are two types of such bonds, cash and surety. These bonds may be posted by the alien, by another person on the alien's behalf called the obligor, or by a surety (insurance) company (also called an obligor). Whether a cash or surety bond is posted is the choice of either the alien or the alien's obligor. INS officials said obligors are usually involved in posting the bonds on aliens' behalf.[2]

[2]In this report, our focus was on bonds in which aliens used obligors.

With respect to a cash bond, an alien or obligor must deposit the entire bond amount in cash (or its equivalent—certified check, bank draft, postal money order, or U.S. Treasury Bond) with the INS district office. The INS district director is responsible for recording the bond and cash transactions and safeguarding the cash and related bond records.

A surety bond provides an alien the opportunity of being released without the alien or the obligor having to provide the full amount of the bond in cash. Under a surety bond, an alien or someone on the alien's behalf must furnish collateral (e.g., liquid assets, jewelry, real estate, etc.) to a surety company's agent to support the bond amount. The alien also pays a percentage of the bond amount to the company. In this type of bond, INS does not require the surety company's agent to furnish collateral but relies on the surety's promise to pay. However, certain forms, including the bond itself and the power of attorney (showing that the agent signing the bond for the company has the authority to execute the bond in the company's behalf), must be prepared and inserted in the alien's file at INS.

The bond represents a contract between the alien or the alien's obligor and INS, in which a pledge of money is made to ensure compliance with the bond conditions. Further, the bond provides that an obligor shall cause the alien to appear upon INS request. The bond agreement is terminated either at the completion of the hearing(s) or at the time of the alien's deportation.

If the bond conditions are fully met, the appropriate INS district office terminates the bond. For cash bonds, the alien's or obligor's money or security, deposited with INS, is returned with 3 percent interest. For surety bonds, INS cancels the surety company's liability to it, and the collateral is released by the surety company to the alien or the person(s) who paid money on the alien's behalf. If a bond condition is not met because the alien fails to appear, the appropriate INS district office declares the bond breached and in the case of a cash bond, the regional office deposits the money or security in a U.S. Treasury account. In a surety bond case, the surety company becomes liable to pay INS the amount stated on the bond.

According to an INS estimate, approximately 70,000 cash and surety bonds, totaling $175 million, were outstanding and not breached in early 1987. About 60 percent, or $105 million, were cash bonds, and about 40 percent, or $70 million, were surety bonds.

Hearing Notification

Once a deportation hearing is scheduled before an immigration judge, EOIR notifies the alien by telegram of the scheduled hearing. EOIR also provides a similar notice to the appropriate INS district office so that obligors could be notified in instances where there are obligors.

If a subsequent hearing is scheduled, EOIR does not send out a notice to either the alien or INS. The INS district trial attorney at the hearing can provide the subsequent hearing information to INS district office D&D officials, who in turn can notify the obligor in writing of the alien's subsequent hearing date in order to maintain the obligor's liability under the bond.

Breached Bonds

If an alien under bond does not appear as required for a meeting with INS or before an immigration judge, INS can consider the bond to be breached. INS regulations do not explicitly require it to notify the obligor of an alien's scheduled hearing so that the obligor can inform the alien. However, if INS does not notify the obligor in advance, the obligor is not liable to pay the bond amount should the alien not appear. If INS notifies the obligor about the alien's scheduled appearance and the alien does not appear, INS must send a breach notice to the obligor as the first step in collecting on the breached bond. The notice must inform the obligor of the right to appeal the breach within 15 days of the notice of alleged breach and include the form on which to make the appeal.

If a surety bond had been used and the 15-day period had expired without an appeal having been filed or upheld, INS determines the breach to be final, and sends the obligor a bill for the bond amount, together with a final notice of breach. If the bill is unpaid 30 days after the billing, the appropriate INS regional accounting office mails notices every 30 days demanding payment from the obligor. If collection is not made within 3 months from the first billing, the account is referred to the INS regional counsel, who, upon review, may initiate action to obtain collection. Such action would not be initiated if counsel determines that collection would not be likely, for example, if the surety company was in liquidation proceedings.

For cash bonds, the breach notification must be sent to the obligor as with surety bonds. Once the breach is final (because there was no appeal or the appeal was not upheld), INS transfers the cash, which had been paid on the bond by the obligor, from its trust account in the Treasury to a Treasury account.

A 1987 draft INS study on breached bonds terminated in 1984 and 1985 stated that 55 percent of all bonds were breached at 19 locations. An INS document stated that the insolvency of five surety companies prevented INS from collecting $9.5 million in 3 years on breached bonds, and that surety companies were delinquent in paying $11.4 million in breached bonds. In commenting on our draft report, Justice pointed out collections that have been made. Specifically, the INS General Counsel's Office collected in excess of $9 million from June 1983 through September 1986, of which the majority was related to breached bonds. It added that a major lawsuit was settled in September 1987 with a surety company agreeing to pay the government $12.5 million for breached bonds.

Because of its concern about management of the bond process, INS held conferences in January and April 1987 to internally consider initiatives for improving the process, with the major focus on proceeding to a cash-only bond system. A March 1987 internal decision memorandum proposing a cash bond approach requested comments from INS regional and district offices on the advantages and disadvantages. On July 1, 1987, INS issued a notice of proposed rulemaking in the Federal Register to change to an all-cash bond system.

Objectives, Scope, and Methodology

We agreed with Senator Dixon's office to

- identify any current internal control weaknesses in the INS bonding system and
- identify issues that INS may need to address if it adopts a cash-only bond system.

We did our work at the INS central office in Washington, D.C., and selected district offices. Additionally, we discussed immigration bond issues with officials from INS regional and district offices and with industry officials. Further, we interviewed officials from EOIR and the Department of the Treasury.

To review the deportation and bonding process we contacted officials from all four INS regional offices and from district offices in New York (Eastern Region) and Miami (Southern Region). These two districts were selected because, according to an INS Program Inspection official, they had large bond volumes. Additionally, their respective regions (Eastern and Southern) had substantial and roughly equal outstanding cash bond balances of about $26 and $21 million. Further, working with these districts enabled us to analyze and compare INS internal controls used in a

region with (Eastern) and one without (Southern) an automated bond management system.

In addition to reviewing the process in those districts and regions, we attended an INS conference in January 1987 during which its bond management problems were discussed. At the conference, we met with INS district officials from Denver and Los Angeles and obtained their views on INS bond programs; we also discussed the INS bond program with officials from the Texas Insurance Board and the Illinois Insurance Commission.

We also

- researched legislation, regulations, and operating instructions, with emphasis on the deportation process, bond management and internal controls;
- reviewed our report[1] and INS reports[2] which addressed INS bond management and internal control problems; and
- reviewed the existing internal controls over the INS bond management process as well as the potential impact of changes being considered to the existing system.

To review INS internal controls over its bond process, we relied on the results of interviews, internal INS documents, and prior audit reports in comparing how INS actually carried out its bond process to the process required by its regulations and operating procedures. We used standards established for the federal government by the U.S. Comptroller General as a guide for determining the existence of internal controls.[3] These standards establish the essential elements of an internal control system to provide assurances that funds, property, and other assets are safeguarded against waste, loss, unauthorized use, and misappropriation. The Federal Managers' Financial Integrity Act of 1982 (Integrity Act) requires agency heads to establish internal control systems that comply with these standards and to report to the President and Congress by December 31 each year as to whether their systems fully comply with the act.

[1]Opportunities for Immigration and Naturalization Service to Improve Cost Recovery and Debt Collection Practices (GAO/GGD-84-86, July 13, 1984)

[2]INS Miami District Office Report, Analysis of Miami Deportation Bond Survey, July 15, 1985, and INS Office of Program Inspection Report, Review of Debt Collection Policies and Procedures, July 8, 1986.

[3]Standards For Internal Controls In The Federal Government (1983) U.S. General Accounting Office.

We did not test internal controls in operation because INS is planning to either improve its current process or require cash-only bonds. We used INS-generated data, but did not verify it except for the existence of problems through visits to INS locations and interviews with officials inside and outside INS. In some instances, such data is based on estimates, or was generated from information systems still being developed, which limited our ability to have accurate nationwide data.

Our review covered INS activities from July 1984 to October 1987. Except as discussed above, our review was performed in accordance with generally accepted government auditing standards and was conducted from October 1986 to May 1987.

Bond Management Problems

We and the INS internal audit organization have identified problems with the INS management of its bond system. As a result, INS has been considering changes since 1984. In July 1987, INS proposed the use of a cash-only delivery bond system. Should INS decide to switch to such a system, it will affect its internal controls. Furthermore, while INS has recognized bond management problems, it has not reported such problems as material weaknesses under the Integrity Act.

Guidance Needed for Setting Bond Amounts

INS officials said they establish bond amounts based on their own judgments because INS has not provided guidance in using its criteria. According to the Chief Immigration Judge, lack of agency-wide guidance often has resulted in immigration judges reducing the bond amounts set by INS. According to an INS study, these lowered bond amounts contribute to higher bond breach rates. The Chief Judge added that if INS had established guidance for setting bond amounts, then immigration judges would be less likely to reduce the bond amounts. INS recognizes the need to refine its criteria by providing guidance for using them.

INS provides its staff with a Form I-265 ("Application for Order to Show Cause and Bond/Custody Processing Sheet") to use in setting bond amounts. This form includes such information about the aliens as their apprehension record, health, employment history, assets, and family members in the country. District officials take these factors into consideration when exercising their own judgment in setting bond amounts to assure aliens' appearances. However, INS provides no guidance on using these factors in setting bond amounts. For example, should employment history be given more or less importance than family members in the country? Based on their individual experiences with these factors, which INS considers to be criteria, INS district officials set the initial bond amount for the alien. According to the Chief Immigration Judge, this practice results in different bond amounts being set for aliens with similar backgrounds because each INS district official weighs these factors differently when setting bond amounts. Therefore, in his opinion, immigration judges are likely to reduce the bond amounts on appeal because of the apparent inconsistency in bond amounts set for aliens who have similar backgrounds.

An INS draft report, entitled Using Alien Characteristics in Bond Level Determination, dated February 1987, indicated that breached bond rates were higher when appeals resulted in reduced bond amounts. Based on over 2,200 bond cases closed in 1984 and 1985 from 19 INS locations in the United States, INS found that aliens breached the bonds in 72 percent

of the cases in which immigration judges reduced bond amounts on appeal. The breach rate was about 44 percent when bonds were not reduced.[1]

INS has been developing bond criteria guidance for establishing bond amounts that can result in more consistent bond amounts for aliens with similar backgrounds. INS believes that such guidance should result in fewer bond reductions by judges on alien appeals, and thereby help improve the alien appearance rate.

In commenting on our draft report, DOJ said that Service-wide criteria for establishing bond amounts are included in its Form I-265. While these criteria are not all encompassing, INS is in the process of refining them. According to DOJ, although the new criteria will improve the process, and, in many cases result in the recommendation of an appropriate bond amount, they will not replace an individual's judgment, nor will they necessarily result in aliens with similar backgrounds having equal bond amounts. Additionally, DOJ said INS will continue to treat each alien as an individual with special concerns, and thus, as a separate and distinct case.

Failure to Notify Obligors About Hearings

EOIR informs aliens by telegram about their deportation hearings. INS regulations do not explicitly require INS to notify obligors of aliens' scheduled deportation hearings so that the obligors can inform the aliens. If the obligors are not notified in advance the obligors are not liable under the terms of the bond should the aliens not appear for their hearings. An official in the INS Office of General Counsel said, according to his interpretation of INS regulations and procedures, INS is required to notify the obligors prior to deportation hearings.

According to an official in the Office of Program Inspection (OPI), the INS internal audit organization, and a Central Office Deportation Officer, district offices commonly are not sending notices in time for the obligors to properly notify the aliens of the scheduled hearings. While we did not have nationwide data concerning this matter, Los Angeles and Miami District Office officials said EOIR did not always inform INS district officials of the aliens' required appearances in sufficient time so that INS

[1]While the study was not based on a statistically valid sample, INS personnel who performed the study said that the sample data appeared to be sufficiently representative to support these findings. We believe caution is needed in interpreting the study results.

could notify the obligors.[2] Also, Miami district officials said that when EOIR notified them in sufficient time, problems such as locating aliens' files prevented them from promptly sending notices to the obligor. Without the files, INS could not obtain information such as the aliens' bond status (e.g., whether an alien was on bond or not) and the obligors' addresses, which are needed to send timely notice.

INS has installed an Alien File and Accounting Control System (AFACS) in district offices in New York, Chicago, and four other locations. According to INS implementation plans, AFACS would be implemented in Miami in 1987, and 45 other sites by 1993. AFACS is supposed to improve district officials' control over the access to alien files by specifying who in INS has a particular alien file.

Improper Billing of Obligors

When aliens have breached their bonds, INS has not been billing the obligors promptly in accordance with its procedures. As a result, INS has delayed collection of money owed the government resulting in an interest cost to the government. Further, obligors' appeals of INS determination that bonds have been breached and the results of such appeals are not always communicated promptly to personnel responsible for further billing and follow-up on these bonds. As a result, INS, in some cases, improperly continues to bill and send letters to the surety companies and carry the surety bills as receivables even though appeals are in process.

INS procedures require that INS bill an obligor for a breached bond promptly after INS has notified the obligor that the bond has been breached. INS district D&D personnel are to then notify the regional office that the district has billed the surety company and the regional office then establishes an account receivable for the funds the obligor owes.[3] If payment is not received after the billing period has expired, the bills are referred to INS regional counsels for collection.

According to its 1986 Integrity Act report, INS takes an average of 130 days to bill the obligor after it has determined that the bond has been breached. A July 1986 OPI report entitled Review of Debt Collection Policies and Procedures said that the delay in billings for breached bonds resulted in a backlog of unbilled breached bonds at a cost of $140 per

[2]According to the Chief Immigration Judge, EOIR does not notify the obligor because EOIR is separate organizationally from INS, and therefore it is not EOIR's responsibility to notify the obligors.

[3]The Eastern Region sends out the bills as opposed to its district offices.

day in interest to the government. Additionally, an OPI report of May 1987 concerning an audit of the Houston District Office said that obligors had not been billed for 425 breached bonds, totaling about $1.4 million. The estimated interest cost was over $41,000 from April 1986 through February 1987. The July 1986 report said that debt collection is a low priority in INS. The report recommended that district and regional officials give prompt attention to billing on breached bonds. A Southern Regional Office finance official also said the billing problem in its Houston district resulted from a low operational priority for collecting on breached bonds, as well as insufficient staffing, and the unavailability of funds to pay staff for overtime to promptly bill obligors.

If an obligor surety company appeals the INS breach notification within 15 days, INS should not bill the obligor until the appeal is resolved. However, according to the July 1986 OPI report, INS regional offices pursued the surety companies on bills already sent even though the sureties had appealed the INS breach determination. In addition, INS regional officials maintained accounts receivable against them for the billed amounts and requested that regional counsels start collection of the unpaid debts. This occurred because district officials did not notify or promptly notify regional officials of the appeals in order for the follow-up billing and collection process to be suspended at the regions. Also, district officials did not inform regional office personnel of cases in which appeals were upheld or denied. Not knowing that an appeal was upheld resulted in accounts receivables being overstated because the regional officials did not cancel the surety companies' debts.

The OPI report concluded that to overcome the problems associated with appeals, INS needed to establish control procedures at district offices to ensure that each district notified its regional office within 5 days of each appeal and the subsequent appeal results. The report said at regional offices, guidelines are needed for handling bills and accounts receivables when appeals are received after the accounts have been established. INS is considering what actions to take on the report.

INS recognizes that problems exist with promptly billing obligors when bonds are breached and with notifying the appropriate INS personnel of appeals and appeal results. However, it does not have the internal controls necessary to determine the extent of its problems.

In commenting on our draft report, DOJ pointed out that INS is taking action that addresses the problems related to notifying and billing obligors. DOJ said INS' main initiative centers on developing its Deportable

Alien Control System, which will automate some of the delivery bond paperwork now being done manually The expansion of the system has not been as rapid as planned; however, DOJ expects that additional sites will come on line in fiscal year 1988.

According to DOJ, bond management and breached bond billings are accomplished manually at the 33 district offices. This manual system is labor-intensive and is often deferred in favor of other pressing field functions more directly related to serving the public and accomplishing critical detention priorities. In view of INS' overall work load and the degree to which surety bonds must compete with scarce resources, INS has concluded that the surety bond program must be automated to enable the management, billing, and collection functions to operate effectively, and to ensure that adequate internal control procedures are in place and operative.

DOJ added that the Commissioner of INS has directed that a working group of selected individuals be established to accomplish the objectives mentioned above. The working group will establish a timetable for completing its objectives and notify Congress, the Commissioner, and other interested parties of its approach. On November 3, 1987, representatives from selected INS operating units met and developed a preliminary plan to pilot an automated system in the Los Angeles District Office. According to DOJ, the automated system will monitor all INS surety bonds, provide prompt notification of scheduled appearances to obligors, monitor requests for waivers to expedite adjudications, calculate and issue billings, and interface with accounts receivable and collections systems. Final plans and proposed timetables will be forthcoming "soon" according to DOJ.

Furthermore, DOJ said that INS General Counsel's Office is arranging to sponsor a conference with the various INS operating units and other federal and state agencies with the objective of correcting and improving INS bonding procedures. The conference will also be designed to educate and inform INS personnel on all facets of bonding activities; notify obligors as to their obligations; formalize implementation of billing procedures; discuss the assessment of interest charges; develop communications between and among the districts, regions, and the appeal unit to expedite the finalization of breaches; and establish criteria for implementing the above improvements.

INS Considering Cash-Only Bond System

INS recognizes that its management controls over delivery bonds need improvements, and INS proposed, in a July 1, 1987, formal rulemaking, to eliminate the use of surety bonds and change to a cash-only bond system.[4] INS says such a change would have several advantages over the current system, including: (1) an increase in alien appearances; (2) the use of existing internal control procedures for operating and monitoring a cash bond system, therefore avoiding having to make corrections to the surety bond system; and (3) eventual elimination of lost collections on breached bonds. While we recognize the advantages of such an approach, the proposed change raises issues that INS will need to address.

According to an INS official participating in a study of over 2,200 bonds from 19 INS locations, a sample of 153 bond cases from the Chicago District Office (the sole location using only cash bonds) had a breach rate of less than 16 percent compared to 55 percent average for all locations sampled, including Chicago. According to the same INS official, the use of cash may have been a factor influencing the low breach rate.[5]

Our observations of INS procedures for its cash bond system in the Miami and New York districts indicated that internal controls appear to exist. While we did not test individual transactions, we observed that INS transactions for the acceptance and transfer of cash bond documents within the New York and Miami district offices appeared to be well documented in log books and files. According to descriptions of internal controls by officials from these offices and our on-site observations: cash from the bonds also appeared to be adequately stored and handled through the use of safes and secure offices, separation of duties existed for people who accounted for the money, and controls (such as the use of armored trucks to transport money) over the transfer of cash to banks were in place. The New York District Office is considered by an INS OPI official to have a heavy bond volume. According to New York District Office officials, the district accepts and transfers amounts of $30,000 to $50,000 each day for which bonds are received.

INS also uses a Bond Accountability and Control System to monitor and follow up on cash bonds in each region. Such a system does not exist for

[4]Since INS has the discretion to change to a cash-only bond system, limiting that discretion would take legislative action.

[5]A more limited study done in 1985 by the Miami District Office indicated that in the Miami district, the breach rate for cash bonds was slightly less (about 68 percent) than the rate for surety bonds (70 percent). The study did not explain the reasons for the results.

surety bonds except in the Eastern region. According to INS officials, the Bond Accountability and Control System has adequate internal controls. For example, one official related the following information about the cash bond system. Every cash transaction update in the bond files is recorded in the system, which also produces reports that INS can use to monitor the amount of immigration bonds and to determine current bond status. Furthermore, the system can identify (1) cash bonds that may have been breached or canceled and (2) documentation needed but not forwarded to the regional bond section for the breached bond collection process.

INS said a cash-only bond system would eventually eliminate INS collection efforts for breached surety bonds as pre-existing surety bonds exit the system. Under such a system, INS would collect the full bond amount from the aliens or their obligors before the alien would be released on bond. Therefore, should aliens breach their bond, INS would have the bond amount in its control.

While changing to the cash-only bond proposal could result in the advantages discussed above, INS would need to address the effect of the transition from the present system. The need to control and safeguard large amounts of cash can have an impact on INS staffing and on its existing internal control system that may require changes.

A cash-only bond system would require some staffing changes. INS officials pointed out that staff time previously expended on surety bond billings, legal counsel follow-up on unpaid bills, and establishing a system to manage surety bonds including the enforcement of bond-writing restrictions for each surety company, would not be needed. We do not know the net effect of such a change on staffing. Pursuant to a March 1987 memorandum, INS obtained comments on the effect of a transition to a cash-only bond system from its district and regional offices. The New York District Office commented that it would not have enough employees to manage a cash-only bond system. The Western Regional Office also said that additional staffing would be needed for a cash-only bond system.

A cash-only bond system may also require some modifications of INS internal controls. For example, the Western Regional Office said the elimination of surety bonds would increase the number of outstanding cash bonds in that region from 19,600 to about 32,600 bonds. This regional office further said even though controls and procedures exist for the handling and storage of cash, larger amounts could increase the

risk of theft. The San Diego District Office, which handles approximately $10,000 to $15,000 in cash daily, also said that larger amounts of cash increased the possibilities of theft and robbery.

As of October 1987, INS had no plans to address these issues. INS is still considering whether or not to change to a cash-only bond system. INS will be better able to address these issues after analyzing comments on its July 1, 1987, proposed rulemaking to change to a cash-only bond system from those who would be affected.

In responding to our draft report, DOJ did not comment on the issues we raised about changing to a cash-only bond system.

Need to Report Bond Management Problems Under the Integrity Act

Although INS has recognized problems with the management of its surety bonds and has begun to address them, the agency did not report them as material weaknesses to DOJ in its 1985 and 1986 Integrity Act reports.

In response to continuing disclosures of fraud, waste, and abuse in many government operations, Congress enacted the Federal Managers' Financial Integrity Act of 1982 in September. Among other things, the Integrity Act and the Office of Management and Budget (OMB) Circular A-123 require agency internal control systems to comply with standards specified by the Comptroller General and be designed to reasonably assure that program objectives are accomplished and funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation. The act also requires each agency to annually evaluate its systems under procedures established by OMB in consultation with the Comptroller General and report to the President and Congress as to whether the systems fully comply with the act.[9] Both the act and OMB Circular A-123 require material weaknesses in agencies' systems of internal control to be reported. OMB Circular A-123 defines material weaknesses, in part, as those which "significantly weaken safeguards against ... loss ... of funds ... or other assets."

In complying with the Integrity Act, INS reported bond control deficiencies such as the 130-day average billing time on breached surety bonds to DOJ. However, INS did not identify the deficiencies as material weaknesses. INS acknowledged that billing times on such bonds would need to

[9]Under this process INS must report any of its "material weaknesses" in a report annually to its parent agency, DOJ, in order that DOJ can report these weaknesses to the President and Congress.

be expedited. The 1986 Integrity Act report pointed out that INS was studying the feasibility of establishing a National Debt Collection Office to centralize the management and collection of debts, with emphasis on fines, liquidated damages, and breached bonds. In addition, the report noted that INS audit reports had recommended control procedures to assure that regional accounting offices are notified of all bond appeal actions. The audit reports had stated that a system needed to be established for accumulating and monitoring the dollar value of surety bonds written by each company and for issuing notices automatically when the sum of the bonds reached a certain ceiling. INS responded to the audit recommendations by saying that it was placing special emphasis on breached bonds and automating INS' breached bonds collection process, and was in the process of eliminating the use of surety bonds.

In its 1985 Integrity Act report, INS did not report problems with bond management, even though surety bond breaches of $15 million as of December 30, 1985, constituted half of INS receivables and about $9 million was not collected. In its 1986 report, INS pointed out problems with its bond management, but none of them were reported as material weaknesses. An official in the INS Office of Security and Special Projects, which drafted the INS Integrity Act report to DOJ, said since INS was initiating corrective actions and had cited problems in the report, no need existed to report the weaknesses as material.

The Integrity Act requires that material weaknesses and the plans and schedules for correcting any such weaknesses be reported. We have consistently held that such weaknesses should be reported until they are substantially corrected.

In responding to our draft report, DOJ did not comment on the issue we raised about reporting bond weaknesses as material.

Conclusions

According to INS documents, the bond breach rate average at 19 locations was 55 percent and $9.5 million in breached bonds over 3 years was not collected. INS has recognized problems in managing its bond system and has initiated corrective actions while proposing to change to a cash-only bond system. However, INS has not

- established guidance for using its criteria for setting bond amounts; it is, however, developing such guidance;

- notified obligors promptly, in many cases, of aliens' scheduled appearances, resulting in such obligors not being liable for bond payment when the aliens fail to appear;
- followed appropriate procedures in billing obligors for bonds that have been breached, thereby delaying collection, resulting in an interest cost to the government;
- notified its regional personnel promptly about obligors' appeals of breached bonds, resulting in obligors being improperly pursued on bills and causing INS staff unnecessary administrative work.

INS is proposing to eliminate the use of surety bonds for producing alien appearances in the deportation process. While the change to a cash-only bond system would eliminate the need for controls over surety bonds, INS would still have to establish criteria for setting bond amounts.

Also, INS needs to make sure that it has adequate internal controls to handle the increases in cash on hand that would result from a cash-only bond system. As of October 1987, INS had no plans to address this issue. While we support INS efforts to improve its bond system, the scope of our work does not permit us to take a position on the desirability and feasibility of INS changing to a cash-only system.

Despite breached surety bonds representing about half of the INS accounts receivables and INS being unable to collect about $9.5 million in breached bonds, INS did not report breach bond problems as material weaknesses in its 1985 and 1986 Integrity Act reports to DOJ. While we recognize INS is considering improvements to address these problems, weaknesses in its bonding system should be reported as material until they are substantially resolved.

Recommendations

Whether INS retains its current delivery bond system or changes to a cash-only bond system, we recommend that the Attorney General direct the Commissioner of INS to establish and require the use of written guidance to better assure consistency among INS personnel in setting delivery bond amounts.

Should INS retain the current delivery bond system, we recommend that the Attorney General direct the INS Commissioner to

- monitor the billing practices for surety bonds to identify untimely billings; and

- establish time frames and procedures for assuring that INS regional staff are notified of obligors' appeals and the results of such appeals, and establish procedures for regional personnel to properly handle billings and accounts receivables when appeals are received after the billing process has begun.

While INS is considering a change to a cash-only bond system, it has no plans at this time to analyze the full effect of such a change. We recommend that the Attorney General direct the Commissioner to determine the actions that must be taken and estimate the staff and money needed to carry out these actions during a transitional period. This should help INS make a more informed decision and determine whether changes to its internal control systems will be needed if it changes to a cash-only system.

We also recommend that, pursuant to the Integrity Act requirements, the Commissioner report to the Attorney General existing weaknesses in surety bond internal controls as being material, until improvements to the bonding system are implemented.

Agency Comments and Our Evaluation

DOJ said that INS has been aware of the problems and a number of actions are in progress to improve its management of the delivery bond program, and that it appreciated our assistance in pinpointing areas in which improvements could be made. The actions in progress regarding (1) establishing guidance for setting bond amounts, (2) notifying obligors about hearings, and (3) billing obligors, if properly implemented, have the potential to address our recommendations.

In our draft report, we proposed that INS establish and require the use of criteria for setting initial bond amounts. We did not consider the factors INS used in setting bond amounts to be criteria. However, in commenting on our draft report, DOJ said INS considers these factors to be criteria for setting bond amounts and added INS is refining its criteria. Accordingly, we revised the report to recognize that, in INS' opinion, its factors are criteria. We also changed our proposal that INS develop criteria, to a recommendation that INS provide guidance for using its criteria. In our opinion, DOJ's statement that INS' criteria are being refined, is consistent with our recommendation that INS develop guidance to more systematically use the factors in setting bond amounts.

INS further pointed out that refining its criteria could neither replace individual judgment, nor necessarily result in aliens with similar backgrounds having equal bond amounts. We agree that refining its criteria in setting bond amounts should not preclude judgments or consideration of other issues such as availability of alien detention space.

DOJ did not address our discussions concerning (1) the action needed to be taken if INS changes to a cash-only system and (2) the need to report as material its weaknesses in the surety bond internal controls under the Integrity Act. Agency comments are found in appendix I.

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Advance Comments From the Department of Justice

U.S. Department of Justice

DEC 22 1987

Mr. William O. Anderson
Assistant Comptroller General
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for providing the Department the opportunity to review your draft report entitled "INS Delivery Bonds: Stronger Internal Controls Needed." In general, the report provides an accurate assessment of the management of the Immigration and Naturalization Service's (INS) surety bond system, and we appreciate the assistance of the General Accounting Office (GAO) in pinpointing areas in which improvements can be made.

Of real importance is the fact that there is a lack of criteria for setting bond amounts. Actually, there are guidelines in Part 103 for establishing bond amounts included in Form I-352, "Application for Order to Show Cause and Bond/Custody Redetermination." While these criteria are not all encompassing, INS is in the process of refining them. Although the new criteria will improve the process, and, in many cases result in the establishment of appropriate bond amount, they will not address individual judgment, nor will they necessarily result in aliens with similar backgrounds having equal bond amounts. INS will continue to treat each alien as an individual with specific facts, and that, of course, may result in disparate bond amounts.

We are aware of the problems concerning the need to provide timely breach notifications to alliances and to promptly bill sureties after it has been specifically determined that the bond has been breached. INS has been taking corrective action in this area and that activity is currently continuing. INS' main initiative centers on development of the Deportable Alien Control System (DACS), which will automate call-ups and process some of the delivery bond paperwork now being done manually. The implementation of DACS has not been as rapid as planned; however, it is expected that additional sites will come on line in FY 1988.

For the most part, bond management and breached bond billings are accomplished manually at the 33 district offices. This manual effort is labor-intensive and is often deferred in favor of other pressing field functions more directly related to serving the public and accomplishing criminal detention priorities. In view

Mr. William J. Anderson

of INS' overall workload and the degree to which surety bonds must compete with scarce resources, INS has concluded that the surety bond program must be automated to enable the management, billing, and collection functions to operate effectively, and to ensure that adequate internal control procedures are in place and operative.

The Commissioner of INS has directed that a working group of selected individuals be established to accomplish the objectives mentioned above. The working group will establish a timetable for completing its objectives, and notify the Congress, the Commissioner, and other interested parties of this approach.

On November 3, 1987, representatives from selected INS operating units met and developed a preliminary plan to pilot an automated system in the Los Angeles District Office. The automated system will monitor all INS surety bonds, provide prompt notification of scheduled appearances to obligors, monitor requests for waivers to expedite adjudications, calculate and issue billings, and interface with accounts receivable and collections systems. Final plans and proposed timetables will be forthcoming soon.

In addition to the above, the INS General Counsel's Office is arranging to sponsor a conference with the various INS operating units and other Federal and State agencies with the objective of correcting and improving INS bonding procedures. The conference will also be designed to educate and inform INS personnel on all facets of bonding activities; notify obligors as to their obligations; formalize implementation of billing procedures; discuss the assessment of interest charges; develop communications between and among the districts, regions, and the appeal unit to expedite the finalization of breaches; and establish criteria for implementing the above improvements.

With respect to the collections aspect of this draft report, we would like to point out that from June 1983 through September 30, 1986, the INS General Counsel's Office effected debt collections in excess of $9 million, the majority being breached bond dollars. In September 1986, a major lawsuit was settled wherein the Dependable Insurance Company and its successors agreed to pay the Government $12.5 million for breached bonds.

As our response and the GAO report point out, INS has been aware of the problems discussed in the draft report, and a number of actions are in progress to improve the management of the delivery bond program. These actions are being "pushed forward" despite the heavy workload demands placed on INS in implementing the Immigration Reform and Control Act of 1986. In our endeavor to improve the surety bond system, we appreciate the suggestions offered by GAO as a consequence of its review.

Mr. William J. Anderson

Should you have any questions concerning our review, please feel free to contact me.

Sincerely,

for Anthony C. Ypsilanti

Harry H. Flickinger
Assistant Attorney General
for Administration

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